FILE COPY

Supreme Court, U. S.
FILED
JUL 9 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

---

No. 72 - 1655

---

PARKER SWEEPER COMPANY,

Petitioner,

v.

THE E. T. RUGG COMPANY,

Respondent.

---

# RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

ROBERT E. STEBENS
50 West Broad Street
Columbus, Ohio 43215
and
JACK M. YOUNG
4420 Sherwin Road
Willoughby, Ohio 44094
Attorneys for Petitioner

MAHONEY, MILLER & STEBENS
50 West Broad Street
Columbus, Ohio 43215
Of Counsel

INDEX


| | PAGE |
|---|---|
| Opinions Below | 1 |
| Jurisdiction and Time Factors | 1 |
| Statutes Involved | 2 |
| Statement of the Case | 2 |
| Reasons for Denying Certiorari | 7 |
| I. Petitioner Did Not Timely Apply for the Writ in Accordance With Statutory Time Limits | 7 |
| II. The Limits and Effect of Statutory Presumption of Patent Validity Has Been Fully and Clearly Determined | 10 |
| III. Statutory Presumption of Patent Validity Is Not an Issue Requiring Review Under the Consideration Suggested in Supreme Court Rule 19 | 12 |
| Conclusion | 18 |
| Appendix | |
| Order of Court of Appeals Denying Petition For Rehearing | A.1 |
| United States Statutes | A.2 |
| Supreme Court Rules | A.4 |

## TABLE OF CASES


| | PAGE |
|---|---|
| Eisele, d.b.a. Zero Internal Gage Company v. St. Armour, 423 F. 2d 135 (6th Cir.1970)..... | 17 |
| Federal Trade Commission vs. Minneapolis-Honeywell Regulator Company, 344 U.S.206..... | 9 |
| Gorham Manufacturing Co. v. White, 81 U.S.411 (1871)..... | 16 |
| Graham et al. v. John Deere Company of Kansas City, et al., 383 U.S.1 (1966)..... | 11 |
| Kolene Corporation et al v. Motor City Metal Treating, Inc. 440 F.2d 77 (6th Cir. 1971)..... | 17 |
| Westwood Chemical, Inc. v. Owens-Corning Fiberglass Corporation, 445 F.2d 911 (6th Cir.1971)..... | 17 |


## TABLE OF STATUTES


| | |
|---|---|
| 28 U.S.C. 1254..... | 2 |
| 28 U.S.C. 2101..... | 2,7,8,9 |
| 35 U.S.C. 102..... | 10,12,16 |
| 35 U.S.C. 103..... | 10,12,16 |
| 35 U.S.C. 171..... | 2,4 |
| 35 U.S.C. 282..... | 10,11,12,13 |


## TABLE OF SUPREME COURT RULES


| | |
|---|---|
| Rule 19..... | 2,12,18 |
| Rule 22..... | 2,8 |
| Rule 34..... | 2,7 |

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

---

No. 72 - 1655

---

PARKER SWEEPER COMPANY,

Petitioner,

v.

THE E. T. RUGG COMPANY,

Respondent.

---

# RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

## OPINION OF COURT OF APPEALS

The opinion of the Sixth Circuit Court of Appeals in this litigation holding Petitioner's patents, Nos. 3,035,294 and Des. 194,051 invalid has now been reported at 474 F. 2d 950.

## JURISDICTION AND TIME FACTORS

Review of the Court of Appeals judgment entered on February 27, 1973 is sought under the statutory provisions

of 28 U.S.C. 1254(1) in conjunction with the discretionary criteria stated in Supreme Court Rule 19. Petitioner applied for a writ of certiorari on June 9, 1973 by filing the present petition therefor on that date, a date twelve days beyond the ninety days time specified in 28 U.S.C. 2101 within which application must be made for a writ of certiorari.

## STATUTES INVOLVED

This controversy involves one other specific patent statute in addition to those specifically noted by Petitioner. This statute is 35 U.S.C. 171, July 19, 1952, c.950, 1, 66 Stat.805, relating t patents for designs.

Timeliness of Petitioner's filing of the petition for a writ of certiorari is governed by 28 U.S.C. 2101 (June 25, 1948, c.646, 62 Stat.961; May 24, 1949, c.139 106, 63 Stat.104) in conjunction with Rules 22 and 34 of the Supreme Court Rules.

These statutes and rules are set forth in the Appendix.

## STATEMENT OF THE CASE

The course of this litigation is that the District Court's judgment in favor of Petitioner Parker on Petitioner's patents, Nos. 3,035,294 and Des. 194,051, was reversed on appeal to the Sixth Circuit Court of Appeals with the case remanded for entry of an order dismissing the complaint against Respondent Rugg. Petitioner's complaint

filed in the District Court alleged infringement of both patents by Respondent. Respondent denied infringement and presented additional defenses of invalidity of the patents as being obvious in view of prior art and uninforcibility of the patent rights as a result of Petitioner's improper licensing practices as to these two patents constituting a misuse of the patent monopoly. The District Court held for Petitioner on all three issues with the Court of Appeals reversing the judgment holding that both patents were invalid. Since a holding of invalidity renders the issues of misuse and non-infringement moot, the Court of Appeals did not reach these two issues although both were before that Court for review. Accordingly, the issues of misuse and non-infringement are not properly reviewable at this stage of appeal proceedings and are reserved for decision by the Court of Appeals.

Petitioner has not accurately characterized the apparatus covered by the patents in suit. This inaccuracy is: (1) an omission of a further structural recitation that is included in each of the four claims of the mechanical structure patent No. 3,035,294; and (2) erroneous inference that the design patent, No. 194,051, also covers mechanical functional features.

With respect to the mechanical patent No. 3,035,294 (Pl. Ex. 5, R.21) each of the four claims includes a further structural relationship of the recited elements. This further specified structural relationship in the words of the claims is "**, the axle means for the

debris receptacle lying forwardly of the center of gravity of the receptacle in all positions to which the receptacle can be moved." In the context of Petitioner's paraphrasing of the lawn sweeper covered by the patents (but actually limited to the mechanical patent No. 3,035,294), this means that the receptacle is arranged on the cart frame and pivotal support to prevent pivotal movement other than within the specifically defined limits related to the receptacle's center of gravity. It is error to state on pages 3 and 4 of Petitioner's Petition that "the receptacle....will automatically return to its debris receiving position when the operator releases the cord" without including the aforesaid structural relationship required to make possible this automatic return.

Inference that the design patent covers the structural description paraphrased by Petitioner (see para. 3 on page 3 of Petitioner's Petition) is error although, in one instance, Petitioner does state that the design patent relates to appearance. Respondent suggests that it is more accurately appropriate to state that design patent No. 194,051 (Pl.Ex.6,R.21) covers the ornamental design of a lawn sweeper, as provided by 35 U.S.C. 171, which ornamental design is that design illustrated and described in the patent.

An apparent error on the part of the Patent Office printer resulted in failure to include a succintly comprehensive description of the design's characteristic features in the printed copies of the '051 design patent (Pl.

Ex. 6, R.21). While this error of the Patent Office initially hinders evaluation of the disclosure and determination of the extent of coverage of the design patent claim, resort to pp. 22 and 23 of the '051 design patent prosecution file adequately clarifies the matter of coverage for the protection of the public and determination of the issues in this litigation.

Respondent introduced and relied upon nine patents (Df.Ex. A-4,-6,-10, -11, -15,-22,-23,-25 and -27, R.154) as evidence supporting a determination that the two patents in suit were invalid under 35 U.S.C. 103 as obvious to one skilled in the art. (Note: Df.Ex.A-27 not considered by Court of Appeals). The District Court stated that these nine patents were classified in the same Patent Office art classification as were the prior art patents cited by the Examiner during prosecution of the patent in question (District Court Finding of Fact 18, p.8a of Petitioner's Appendix). With reference to Petitioner's statement of case (Petition p.5), it is submitted that this Finding of Fact indicates Petitioner clearly erred in making the unfounded supposition that these nine patents "were undoubtedly considered by the Examiner during his search." It is conceded that two of the nine patents which were specifically relied upon by Respondent to support a determination of invalidity of the '051 design patent were cited by the Examiner in initially rejecting the design claim and were obviously considered by the Examiner. The last sentence of the District Court's Finding of Fact 18 clearly shows

that this supposition is unfounded as is quoted as follows for immediate reference:

> "No evidence was presented that the Examiner had not considered all of the patents cited prior to the approval of the patent in question."

This quoted statement merely indicates no evidence was presented relative to an unknown matter and does not support Petitioner's inference that these patents were "undoubtedly considered by the Examiner during his search," excepting the aforementioned two patents specifically cited by the Examiner.

Petitioner places considerable emphasis on classification of the prior art in the Patent Office to substantiate its argument that the prior art relied upon by Respondent to demonstrate invalidity cannot be considered on review. Petitioner introduced as evidence of this classification an affidavit by its counsel (Pl.Ex.10,R.219) (Appendix p.16 in Court of Appeals) which indicated that these nine prior art patents, on January 14, 1972, were located in the same classification searched by the Examiner during the course of examining the patent applications which ultimately issued as the patents in suit. This fact that these prior art patents were located in these Examiner searched classifications in 1972 does not show that they were so located when the Examiner made his search in 1960 when the applications were in the Patent Office. The Patent Office is continually reclassifying art, and the Patent Office itself estimates that about 20% of the patents are reclassified each year. This point

was discussed in Respondent's reply brief at pages 6 and 7 filed in the Court of Appeals. The 12 year span between the Examiner's search and the search of Petitioner's counsel does provide a conclusive basis to assume that the nine prior art patents were in the art searched by the Examiner. In view of this practical aspect of classification, it is purely conjectural that all of the nine prior art patents were in the art searched by the Examiner, and the 1972 classification does not substantiate Petitioner's supposition that the prior art patents "were undoubtedly considered by the Examiner during his search."

## REASONS FOR DENYING CERTIORARI

### I. Petitioner Did Not Timely Apply For the Writ in Accordance With Statutory Time Limits

The time period within which application must be made for writ of certiorari is specifically prescribed in 28 U.S.C.2101 (A.2). Paragraph (c) of that section specifically states that a "writ of certiorari... shall be taken or applied for within ninety days after the entry of such judgment" sought to be reviewed. Petitioner seeks review of the Court of Appeals judgment entered February 27, 1973 that both patents in suit are invalid. The ninety day time period specified by Section 2101 expired on May 28, 1973; however, May 28 being a holiday, the time period was extended Under Supreme Court Rule

34 (A.6) to May 29, 1973.

Rule 22 of the Supreme Court Rules (A.5) also covers the time for filing of a petition for writ of certiorari. Part 3 of that rule is the applicable portion and states that "A petition for writ of certiorari in all other cases shall be deemed in time when it is filed with the clerk within the time prescribed by law." Section 2101 of Title 28 of the U.S.C. sets the time within which a petition shall be filed. The statutory prescribed time period of ninety days may be extended in accordance with that section 2101 (c) by a justice of the Supreme Court "for good cause shown." Since no extension has been obtained, Petitioneer cannot be said to have timely applied for a writ of certiorari by filing of a petition eleven days after the holiday-extended term of ninety days.

Petitioner did petition the Court of Appeals for rehearing on March 13, 1973. That petition was denied on April 16, 1973 by order of that Court filed on that date. The order denying the petition for rehearing merely stated that it did not appear any basis was presented to require further consideration of the matter. This general form denial is included in the Appendix (A.1).

It is submitted that a general denial by the Court of Appeals of a petition for rehearing, and without any change whatsoever to the judgment sought to be reviewed, does not operate to automatically extend the time. The act of filing a petition for rehearing with a general denial of that petition had no effect on the merits of the decision

and does not provide a basis for extending the time period for filing a petition for writ of certiorari as clearly prescribed by statute 28 U.S.C. 2101 (A.2). The principle that litigation must be ended at some definite point is succintly stated in Federal Trade Commission vs. Minneapolis-Honeywell Regulator Company, 344 U.S. 206; 97 L.Ed 245 (1952), although that case does not appear to have had a petition for rehearing filed on the issues sought to be reviewed, at p. 213:

> "***It is a principle reflected in the statutes which limit our appellate review jurisdiction to those cases where review is sought within a prescribed period. Those statutes are not to be applied so as to permit a tolling of their time limitations because some event occurred in the lower court after judgment was rendered which is of no import to the matters to be dealt with on review."

This principal is applicable in this case. Petitioner did not file this petition for writ of certiorari within the statutory prescribed time period of ninety days running from the date of entry of the judgment of the Court of Appeals. Petitioner did not seek extension of time in accordance with 28 U.S.C. 2101 (c). Hence, this statute requires that this litigation be considered terminated on May 29, 1973, and that this petition for a writ of certiorari be denied.

## II. The Limits and Effect of Statutory Presumption of Validity With Respect to Patents Has Been Fully and Clearly Determined.

This statutory presumption of patent validity prescribed by 35 U.S.C. 282 is applicable only if the Patent Office grants a patent in accordance with all appropriate standards and criteria prescribed by statute, specifically those prescribed by 35 U.S.C. 102 and 103 (Petition Appendix, pp. 29a, 30a).

A determination by the Patent Office that an invention meets the standards and criteria for granting of a patent is a determination that is reviewable by the Federal Courts. It is without question that the issue of validity may be raised as a defense in a suit charging infringement and that this defense may be based on prior art patents. See part (2) and the last paragraph in 35 U.S.C. 282. (Petition Appendix, pp. 31a, 32a)

The prior art patents were introduced in evidence in this case to determine the invalidity of Petitioner's '294 and '051 patents on the basis of obviousness under 35 U.S.C. 103. Eight prior art patents were specifically reviewed in detail by the District Court and by the Court of Appeals in arriving at their respective conclusions on the issue of obviousness. Only two of these eight patents had been specifically cited and considered by the Patent Office, and those two only in connection with the design patent, No. 194,051.

Petitioner proposes that this is the question on review; Whether the

Court of Appeals could review the obviousness aspect after the District Court had concluded the patents to be valid and not obvious in view of the prior art. The apparent basis for this question is Petitioner's contention that the statutory presumption of validity under 35 U.S.C. 282 prevents independent review by the Court of Appeals of the obviousness aspect, admitted to be a question of law by Petitioner (Petition, p. 14, line 8 of the Conclusion).

Reviewability of the issue of obviousness is no longer a question open to further discussion. This is the precise issue litigated and reviewed by this Honorable Court in Graham v. John Deere Company, 383 U.S. 1 (1966). In that case, the Appellate Court evaluated the prior art, reviewed the obviousness aspect, decided the "ultimate question of law," and held invalid the patent that had been held valid by a lower court. The statutory presumption of validity was overcome in that case by a prior art patent which was not before the Patent Office in that it was not specifically cited during the course of prosecution.

It is submitted that the question now proposed by Petitioner is the same question that has been definitely answered in Graham v. John Deere, supra. Prior art not cited by the Patent Office was introduced in evidence for determining the issue of obviousness. After the patents in suit were held valid over prior art by the District Court, that some prior art was reviewed at the

appellate level, and it was concluded that the patents were invalid on the basis of obviousness. Graham uniquivocally supports Respondent's contention that clear guidelines have been provided by the Supreme Court as to the statutory presumption of validity and its relationship to the issue of obviousness. It is not necessary that this Honorable Court again consider the same question in the same context since no special and important reasons and no substantial questions have been presented meriting review under Supreme Court Rule 19 (A.4).

## III. Statutory Presumption of Patent Validity is Not an Issue Requiring Review Under the Consideration Suggested in Supreme Court Rule 19.

It is most clear that Section 282 of Title 35, U.S.C., (Petition Appendix, p. 31a) states that a patent is presumed valid. The existence of that presumption is unquestioned.

It is equally clear and unquestioned that this presumption of validity is rebuttable. Section 282 lists the basis for challenging validity and includes asserting that any claim does not meet the conditions for patentability under part II of Title 35, which part includes Sections 102 and 103 (Petition Appendix, pp. 29a, 30a) The pertinent provisions of Section 102 are that a person is not entitled to a patent if the invention was patented in this country before invention by applicants for patent, or if the invention was patented in this country more than one year prior to the date of the application for patent. Section

103 adds the requirement of non-obviousness of the subject matter to a person having ordinary skill in the art relative to the differences between the subject matter sought to be patented and the prior art.

A factual basis must be presented to overcome this presumption of validity and Respondent did precisely that in the District Court. Evidence presented to provide this factual basis included nine U.S. patents (Df.Ex. A-4,-6,-10,-11,-15, -22,-23,-25 and -27, R.154). It will be noted here that Df. Ex. A-27 was not included in the Appendix filed in the Court of Appeals and was not specifically considered by that Court. Use of patents as evidence in sustaining invalidity is specifically contemplated by 35 U.S.C. 282 wherein the last paragraph of that section (Petition Appendix, p.32a) prescribes the procedure for noticing the patents which will be relied upon at trial.

These patents were properly noticed and introduced in evidence. Both Petitioner's and Respondent's expert witnesses commented on these patents, and the District Court made its evaluation and concluded that both patents in suit were valid. The Court of Appeals also had these nine prior art patents before it during review of this matter; and after independent evaluation, the Court of Appeals concluded that both patents in suit were invalid. Without question, nine prior art patents were introduced as evidence having direct bearing on rebutting of the statutory presumption of validity, and the disclosures of eight of these patents formed the basis of the Court of Appeals' determination that both patents

in suit were invalid.

With respect to patent No. 3,035,294, the Court of Appeals reviewed and commented on the Anderson, Tilton, Reynolds, Rogers and Gleason patents (Df.Ex. A-4, -6,-10,-11 and -15, respectively, R. 154) which constituted the five prior art patents relied upon by Respondent to rebut the presumption of validity and to support the conclusion of invalidity by reason of obviousness. The Court of Appeals, after making specific analysis and evaluation of these prior art patents, stated: (see Appendix pp. 24a and 25a in Petitioner's Petition)

> "What we hold is that the state of the art included all of these patents, and that a skillful mechanic setting out to build a towable dumpable lawn sweeper to be used in connection with a lawn mower tractor in the early 1960's could accomplish his mission without adding any "invention to the art."

Continuing, the Court of Appeals then stated:

> "As a matter of law, we hold that the Parker Sweeper Patent '294 is invalid because this record demonstrates a failure to meet the nonobviousness test of 35 U.S.C.§103 (1970)."

The Court of Appeals did not substitute its findings of fact for those of the District Court as to the prior art. The Court of Appeals reviewed the prior art and made additional findings of fact and then determined the legal question of obviousness. At the oral hearing the Court of Appeals commented that the District Court had not made sufficient findings to

support the District Court's holding on the issue of obviousness. This is clearly indicated in the Court of Appeals opinion (Petitioner's Appendix, p. 19a) where that Court, in referring to the last sentence of the District Court's finding 17, stated:

> "As we have indicated above, this sentence appears to be the ultimate conclusion of law which the District Judge subsequently supported with the reasoning under the heading of Conclusions of Law:..."

Subsequently, (Petitioner's Appendix, pp. 20a, 21a) the Court of Appeals further indicates that it did not substitute findings of fact by stating:

> "Accepting, as we do, the findings of fact of the trial judge and the applicability of both the secondary considerations and the presumption just referred to, we are still unable to agree that the resulting product was "non-obvious" within the meaning of the constitutional and statutory scheme.
>
> We believe this record and the District Judge's findings require the conclusion that every element critical to this patent was anticipated in one or more of the nine patents as to which the parties stipulated. Although appellant's claims describe the sweeper brush and the mechanism which rotates it, it is too clear for argument that these features are anticipated by all nine of the described patents and many other sweepers."

This leaves no question that the Circuit Court of Appeals based its determination

that the two patents in suit were invalid for obviousness, on the District Court's finding of fact and on its further findings and evaluation of the prior art.

Petitioner's design patent No. 194,051 was similarly considered in view of evaluation of three prior art patents (Df. Ex. A-22,-23 and -25, R.154) by the Court of Appeals. That Court then applied the standards for reviewing patentability of a design patent set by the Supreme Court in Gorham v. White, 81 U.S. (14 Wall.) 511, 524-25,528 (1871). The result of this review is summarized by the Court of Appeals statement: (see Appendix p. 28a of Petitioner's Petition)

> "We recognize, of course, that the '051 design differed from the others in both size and framing. But tested by the Gorham standard as applied in Thabet to the eye of the ordinary observer, the designs must be regarded as substantially the same."

The foregoing summary of the Court of Appeals review fully substantiates that Court's conclusion that both patents in suit were invalid as a matter of law in accordance with long accepted review standards as to patentability and pursuant to the statutory requirements of Sections 102 and 103 of Title 35. Factual determinations are the prior art patents presented as documents that speak for themselves. These facts do not require a separate summarization; a summarization which Petitioner proposes should be classified as a finding of fact that could only be determined by the District Court. The Court of Appeals

reviewed these factual determinations, the prior art patents, and followed long accepted review standards consistent with the Supreme Court and the Sixth Circuit. Consistency in the Sixth Circuit is adequately demonstrated in Westwood Chemical, Inc. v. Owens-Corning Fiberglass Corp., 445 F.2d 911 (6th Cir.1971) wherein the Sixth Circuit Court of Appeals, in applying the three step test in determining obviousness and referring to the third step of determining whether the improvement would have been obvious to one skilled in the art, stated:

> "this requires application of a legal criteria and therefore is a question of law, fully reviewable by the Appellate Court."

Consistency in the Sixth Circuit that this correct view of obviousness being a conclusion of law based on fact determinations and the lower courts'determination thereof fully reviewable is further demonstrated in Kolene Corporation et al. v. Motor City Metal Treating, Inc., 440 F.2d 77 (6th Cir.1971) and Eisele, d.b.a. Zero Internal Gage Company v. St. Amour, 423 F. 2d 135 (6th Cir. 1970).

Thus, the Court of Appeals' conclusion, as a matter of law, that the two patents in suit were invalid is not inconsistent with fundamental principles applied by the Sixth Circuit with respect to the question of statutory presumption of validity. The Court of Appeals holding of validity is simply the result of the presumption being overcome by the prior art evidence presented and does not present any special and important reason or substantial question

for review within considerations governing review on certiorari as stated in Supreme Court Rule 19.

## CONCLUSION

Petitioner has failed to timely file its petition for writ of certiorari as prescribed by the applicable statutes, and this petition must therefore be denied. The questions proposed as meriting review, specifically, the effect of the statutory presumption of patent validity and appellate reviewability of the issue of obviousness, are questions that have been fully answered. Application to the specific situation of this case does not present any new questions, and the issues have been correctly determined by the Court of Appeals following the cited precedents. The Court of Appeals for the Sixth Circuit having followed the applicable precedents, has not erred. Since no special and important reasons and no substantial questions meriting review under Supreme Court Rule 19 has been presented, this petition should be denied.

Respectfully submitted,

Robert E. Stebens
50 West Broad Street
Columbus, Ohio 43215
and
Jack M. Young
4420 Sherwin Road
Willoughby, Ohio 44094

No. 72-1664

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

| | |
|---|---|
| PARKER SWEEPER COMPANY, Plaintiff-Appellee, | Filed April 16, 1973 |
| vs. | O R D E R |
| THE E. T. RUGG COMPANY, Defendant-Appellant. | |

Before: EDWARDS, CELEBREZZE and KENT, Circuit Judges.

On consideration of the motions for rehearing and rehearing in banc filed in the above-styled case; and

No judge in active service in the court having moved for rehearing in banc, and the motion having been referred to the panel which heard the appeal; and

Said panel noting no fact or argument advanced in the motion for rehearing which had not been appropriately considered prior to the original decision,

Said motion for rehearing is hereby denied.

Entered by order of the Court

/s/ James A. Higgins
Clerk

UNITED STATES STATUTES

28 U.S.C. 2101

§2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceedings, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to

review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay. June 25, 1948, c.646,62 Stat.961; May 24, 1949, c.139, § 106,63 Stat.104.

35 U.S.C. 171

§171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent

therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided. July 19, 1952, c.950, 1, 66 Stat.805.

SUPREME COURT RULES

Rule 19. Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings,

or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

Rule 22. Review on certiorari--time for petitioning

1. A petition for writ of certiorari to review the judgment of a state court of last resort in a criminal case shall be deemed in time when it is filed with the clerk within ninety days after the entry of such judgment. A justice of this court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding sixty days.

2. A petition for writ of certiorari to review the judgment of a court of appeals in a criminal case shall be deemed in time when it is filed with the clerk within thirty days after the entry of such judgment. A justice of this court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding thirty days. If the original judgment in such a case was entered in a district court in Alaska, Guam, Hawaii, Puerto Rico, the Virgin Islands, or the Canal Zone, the petition shall be deemed filed in time if

mailed by air-mail under a postmark dated within the thirty-day period or due extension thereof.

3. A petition for writ of certiorari in all other cases shall be deemed in time when it is filed with the clerk within the time prescribed by law.

4. An application for extension of time within which to file a petition for writ of certiorari must set out, as in a petition for certiorari (see Rule 23(1), subparagraphs (b) and (f), the grounds on which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed and have appended thereto a copy of the opinion, and must set forth with specificity the reasons why the granting of an extension of time is deemed justified. For the time and manner of presenting an application for extension of time within which to file a petition for writ of certiorari, see Rules 34, 35(2), and 50. Such applications are not favored.

Rule 34. Computation and enlargement of time

1. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. A half holiday shall be considered as other days and not as a holiday.

2. Whenever any justice of this court or the clerk is empowered by law or under any provision of these rules to extend the time within which a party may petition for a writ of certiorari or docket an appeal or file any brief or paper, an application seeking such extension must be presented to the clerk within the period sought to be extended. Applications for extension of time to file petitions for certiorari or to docket appeals shall be submitted at least ten days before the expiration of the period sought to be extended and will not be granted except in the most extraordinary circumstances if filed during the last ten days of such period.

3. All applications seeking an extension of time within which a party may petition for a writ of certiorari or docket an appeal or file any brief or paper must be presented and served upon all other parties as provided in Rule 50, but such applications for extension of time, if once denied, may not be renewed before another justice after expiration of the period sought to be extended.

4. Whenever a justice or the clerk has granted an extension of time within which a party may petition for a writ of certiorari or docket an appeal or file any brief or paper it shall be the duty of the party to whom such extension is granted to give all other parties to the proceeding prompt notice thereof.

5. All applications for extension of time to file briefs, motions, appendices or other papers, to designate parts of records for printing in appendices, or otherwise to comply with time limits provided by these rules, except

applications for extensions of time to file petitions for certiorari, to docket appeals, to petition for rehearings or to issue mandates shall in the first instance be acted upon by the clerk, whether addressed to him, to the court or to a justice. Any party aggrieved by the clerk's action on such application may request that it be submitted to a justice or to the court.